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THE CHARITABLE CHOICE PROVISIONS OF H.R. 4365 SHOULD BE AMENDED TO BAR ANY FORM OF DISCRIMINATION IN THE USE OF FEDERAL FUNDS

- The Charitable Choice provisions contained in H.R. 4365 would permit religious organizations receiving federal funding to invoke Title VII's exemption from the ban on religious discrimination with respect to employees or applicants for employment in positions that are involved with the delivery of federal program services. This is wholly inconsistent with longstanding principle that federal monies should not be used to discriminate in any form. H.R. 4365 should be therefore amended to reflect this principle.

- The Title VII exemption relieves private religious organizations from the prohibition against employment discrimination on the basis of religion. 42 U.S.C. § 2000e-1(a). The exemption originally applied only to the employment of individuals who performed work connected with the employer's religious activities. However, Congress broadened the exemption in 1972 to allow religious discrimination in employment relating to all of the organization's activities, not merely those involving "religious activities." Thus, private religious employers can discriminate against persons with respect to such secular positions as janitor or receptionist. An employer can discriminate not only on the basis of religious affiliation, but also on the basis of conduct or views inconsistent with a religion's tenets and teachings.

- Allowing Title VII's religious exemption to be applied to staffing decisions by religious organizations as they deliver the services contemplated by H.R. 4365 will result in a glaring exception to the longstanding principle that federal funds may not be used in a discriminatory fashion. In 1964, with strong bipartisan support, Congress passed the Civil Rights Act to outlaw many forms of racial discrimination in the United States. A centerpiece of that law is Title VI, which bans discrimination by recipients of federal funds. For the last 35 years, the principle that government money should not support discrimination has been bedrock principle. Without amendment, H.R. 4365 threatens to erode that principle.

- H.R. 4365 would allow religious organizations to receive federal grants, enter into contracts with the federal government, and administer services under a federal program. Non-religious recipients of federal funds are prohibited from discriminating on religious grounds against staff members whose jobs are connected with federal programs. But H.R. 4365 would exempt all employees of religious organizations — even those who are specifically hired with federal grant funds for the purpose of administering the federal grant or contract — from the protection against religious discrimination that is provided by Title VII of the Civil Rights Act of 1964. This is unnecessary and unwise.

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- H.R. 4365 could substantially enlarge the number and range of jobs in the United States that are not covered by the "ordinary" protections against discrimination that have become an accepted part of the employment market in this country in the last 35 years. It is especially troubling that this would happen only when federal dollars make those jobs or job assignments possible.

- This exemption is not necessary to protect religious organizations from unwarranted interference with the practice of their faiths. The First Amendment simply does not give religious organizations blanket immunity from any and all government requirements. In particular, when religious organizations seek government benefits, directly or indirectly, they must meet non-discrimination mandates.

- In *Bob Jones University v. United States*, 461 U.S. 574 (1983), the Supreme Court held that the University was not entitled to the indirect benefit of federal tax-exempt status in light of its policy forbidding interracial dating by students, which the University had adopted based on the fundamentalist conviction that "the Bible forbids interracial dating and marriage," *see id.* at 580. Yet, under the language of H.R. 4365, Bob Jones University could become a provider of services under one or more federal programs and require that employees whom it hired or assigned to work in those programs subscribe to its religious tenets and not engage in interracial dating — and neither the EEOC nor a staff member fired for violating that requirement could obtain a remedy against the University under Title VII.

- By expanding the Title VII exemption to cover non-religiously based federal service programs, H.R. 4365 would blur the distinction between the private, sectarian domain and the public arena. That distinction has long been a critical source of protection for religious freedom from governmental interference. Eliminating it, as H.R. 4365 would do, to immunize discrimination with federal funding, would set a dangerous precedent because it would open the door to future changes in the law that might subject religious groups to more regulation once the traditional distinction has been abolished.

- The House should amend H.R. 4365 to avoid these problems by preserving the original exemption from Title VII's coverage for the private activities and operations of religious groups and organizations, while extending Title VII's protections against discrimination to individual employed by, or seeking employment within, the voluntarily federally funded program operations with which such groups or organizations may decide to become involved.